

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAHIM OMARKHAN LOCKRIDGE,

Defendant-Appellant.

FOR PUBLICATION

February 13, 2014

9:00 a.m.

No. 310649

Oakland Circuit Court

LC No. 2011-238930-FC

Advance Sheets Version

Before: BECKERING, P.J., and O'CONNELL and SHAPIRO, JJ.

O'CONNELL, J.

Defendant appeals as of right his sentence of 8 to 15 years' imprisonment for his jury-based conviction of involuntary manslaughter, MCL 750.321. We affirm defendant's sentence, but remand the case to the trial court for the ministerial task of correcting the presentence investigation report (PSIR).

Defendant first argues that the trial court abused its discretion by imposing a 10-month upward departure from the sentencing guidelines. Defendant maintains that the guidelines adequately accounted for his conduct and that the trial court failed to articulate a substantial and compelling reason for the departure. We review for abuse of discretion the trial court's conclusion that there was a substantial and compelling reason to depart from the guidelines. *People v Hardy*, 494 Mich 430, 438 n 17; 835 NW2d 340 (2013). A trial court "'may depart from the appropriate sentence range established under the sentencing guidelines set forth in MCL [777.1 *et seq.*] if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure.'" *People v Babcock*, 469 Mich 247, 256; 666 NW2d 231 (2003), quoting MCL 769.34(3) (alteration in original). A substantial and compelling reason must be based on objective and verifiable factors. *People v Horn*, 279 Mich App 31, 43; 755 NW2d 212 (2008). "To be objective and verifiable, a reason must be based on actions or occurrences external to the minds of those involved in the decision, and must be capable of being confirmed." *Id.* at 43 n 6. "The reasons for departure must also be of considerable worth in determining the length of the sentence and should keenly or irresistibly grab the court's attention." *People v Anderson*, 298 Mich App 178, 183; 825 NW2d 678 (2012) (quotation marks and citation omitted). Further, as intended by the Legislature, a substantial and compelling reason exists only in exceptional cases. *Babcock*, 469 Mich at 257. Lastly, the "departure must be proportionate to the defendant's conduct and criminal history. The trial court must justify the particular departure it made by explaining why the sentence imposed is more proportionate than

a sentence within the guidelines recommendation would have been.” *People v Portellos*, 298 Mich App 431, 453; 827 NW2d 725 (2012) (quotation marks and citations omitted).

Defendant’s 8-year minimum term of imprisonment is an upward departure from the recommended sentencing guidelines range of 43 to 86 months. The trial court articulated the following reasons for the departure: (1) that defendant had violated court orders regarding contact with the victim, (2) that the sentencing guidelines did not reflect the extent of defendant’s prior altercations with the victim, (3) that defendant killed the victim in the presence of their children, and then left the residence while the children attempted to revive the victim, and (4) that during and after the offense, defendant showed no concern for the physical or emotional well-being of the children.

This Court has previously concluded that the psychological injury suffered by the victim’s family members, the demonstration of escalating violence toward the victim, and the existence of a probation violation constitute objective and verifiable reasons to depart from the guidelines. See, e.g., *People v Corrin*, 489 Mich 855 (2011); *Horn*, 279 Mich App at 48; *People v Schaafsma*, 267 Mich App 184, 185-186; 704 NW2d 115 (2005). The trial court’s reasons for the departure are objective and verifiable. Further, considering the exceptional nature of the crime, the trial court’s stated reasons keenly and irresistibly grab this Court’s attention in support of the upward departure.

Defendant argues that his conduct has been adequately accounted for by the sentencing guidelines. In departing from the sentencing guidelines, a trial court may “not base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range *unless* the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight.” MCL 769.34(3)(b) (emphasis added). While prior record and offense variables may account for defendant’s past criminal record and the psychological injury to the victim’s family, given the unique circumstances at hand, the escalation of the domestic-violence conduct toward the victim, the fact that the crime occurred in plain view of the children, and that defendant left his children alone with the trauma of attempting to revive their mother, the trial court did not err by finding that the prior record and offense variables inadequately accounted for defendant’s conduct.

Defendant also argues that the trial court based its departure on improper factors, i.e., defendant’s gender and a belief that defendant was guilty of the greater offense of second-degree murder. A trial court may not base a departure on a defendant’s gender or make an independent finding regarding whether a defendant is guilty of another offense and justify the departure on that basis. MCL 769.34(3)(a); *People v Glover*, 154 Mich App 22, 45; 397 NW2d 199 (1986), overruled in part on other grounds by *People v Hawthorne*, 474 Mich 174; 713 NW2d 724 (2006). While the trial court discussed the jury’s verdict, the trial court’s comments did not suggest or reveal an intention to base the departure on a perceived belief that the jury was wrong. Moreover, a review of the record does not suggest that the trial court departed from the guidelines because of defendant’s gender. Indeed, the trial judge shared her opinion regarding domestic violence cases but, again, those comments do not suggest or reveal an intention to depart on that basis. Accordingly, the trial court did not abuse its discretion by departing upward from the sentencing guidelines range.

In a supplemental brief, defendant argues that the trial court engaged in judicial fact-finding, which, according to defendant, violated the new rule in *Alleyne v United States*, 570 US ____; 133 S Ct 2151; 186 L Ed 2d 314 (2013). This Court recently held that the decision in *Alleyne* does not implicate Michigan's sentencing scheme. See *People v Herron*, 303 Mich App 392; 845 NW2d 533 (2013). This Court is bound to follow *Herron*, and accordingly, I decline to address the argument in defendant's supplemental brief.

At sentencing, defendant challenged the accuracy of the information in the PSIR, and the trial court agreed to make four corrections to the report. The PSIR has been amended and all but one of the changes has been made. Specifically, the PSIR still contains the following sentence: "[K.L.] told the police that her father was choking her mother in the master bedroom upstairs." Therefore, this Court remands for the ministerial task of making the correction to the PSIR and orders the trial court to transmit a corrected copy of the report to the Department of Corrections. See *People v Martinez (After Remand)*, 210 Mich App 199, 203; 532 NW2d 863 (1995), overruling on other grounds recognized by *People v Edgett*, 220 Mich App 686, 692-694; 560 NW2d 360 (1996).

We affirm defendant's sentence, but remand for the ministerial task of correcting the PSIR. We do not retain jurisdiction.

/s/ Peter D. O'Connell